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CASE NO. 84-298

# In The Supreme Court of the United States

OCTOBER TERM, 1983

LAWRENCE A. SALIBRA, II,
*Petitioner,*

v.

THE SUPREME COURT OF OHIO, ET AL.,
*Respondents.*

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**ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT**

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## BRIEF IN OPPOSITION TO THE PETITION FOR WRIT OF CERTIORARI

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## QUESTION PRESENTED

Is a rule of the Supreme Court of Ohio governing admission to the bar without examination rationally related to assuring attorney competency where, a) the rule excepts from its coverage the narrow class of attorneys in Ohio who, not having been admitted to the bar, are permitted to practice only on behalf of a single full time employer; b) the rule, designed to encourage immigration into Ohio of experienced attorneys from other states, credits only experience gained by such attorneys while outside Ohio and while therefore unable to sit for the Ohio bar examination without considerable inconvenience and expense; and c) the rule encourages inexperienced attorneys not admitted to the bar in Ohio and taking up a single-employer practice in Ohio to promptly take the Ohio bar examination to thereby demonstrate competency and become eligible for a wider practice?

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**Other Authorities:**

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Rule I, Section 9(A)(e), Rules for the Government of the Bar of Ohio. . . . . .3, 6

Rule VI(5), Rules for the Government of the Bar of Ohio . . . . . .1

## STATEMENT OF THE CASE

This case is an Equal Protection Clause challenge to a portion of the rule of the Supreme Court of Ohio governing admission to the bar without examination, Rule I, Section 9, Rules for the Government of the Bar of Ohio. Contrary to Petitioner's statement, the rule is not designed to protect Ohio attorneys from competition, but rather to attract experienced attorneys to Ohio. More importantly, the rule is substantially related to assuring attorney competency. Section 9[1] provides that an attorney admitted to the bar of another state and of good moral character may be admitted into Ohio's bar without examination if, "while a nondomiciliary of Ohio and for at least five years, [he] engaged in legal work outside Ohio of such character and discription as shall satisfy this Court that the applicant possesses the legal skills deemed adequate for admission to the practice of law in Ohio without examination." The purpose of the "outside Ohio" requirement is to exclude non-admitted attorneys living and practicing in Ohio pursuant to Rule VI, Rules of the Government of the Bar,[2] which permits non-admitted attorneys to practice in Ohio "solely for his employer as a full-time employee," Rule VI(5).

Petitioner is such a non-admitted, single employer attorney practicing in Ohio who challenges his exclusion from admission without examination as a denial of equal protection. Both the District Court and the Court of Appeals rejected his challenge. This Court ought not to review the case, for the case does not present a novel or important issue of federal law, and was correctly decided below.

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[1]Rule 1, Section 9, is set out in full at page 3 of the Petition for Writ of Certiorari.

[2]Rule VI is set out in full at page 5 of the Petition for Writ of Certiorari.

## REASONS FOR DENYING THE PETITION FOR WRIT OF CERTIORARI

### A. THIS CASE DOES NOT PRESENT AN ISSUE OF GREAT IMPORTANCE TO THE REGULATION OF THE PRACTICE OF LAW BY STATE SUPREME COURTS.

It is important at the outset to dispel Petitioner's assertion that this case presents an issue of national importance in attorney regulatory matters. The bar regulatory rules at issue create a narrow exception to the basic requirement that attorneys pass a bar examination as a prerequisite to admission to practice in Ohio. Rule I, Section 9 exempts from the examination attorneys practicing outside Ohio and wishing to migrate to Ohio to practice if certain indicia of competence are present. The clear purpose of the rule is to attract such attorneys to Ohio. Ohio, therefore, has *not* embarked upon a program of discouraging immigration of attorneys so as to protect Ohio attorneys from competition. No constitutionally suspect parochialism is here present.

Rather, Petitioner complains that the exemption from examination is not broad enough—that it should extend beyond experienced attorneys in other states to include attorneys residing and lawfully practicing in Ohio although not admitted to the Ohio bar. His contention that the defined class is underinclusive is not therefore of major import to national legal affairs, but is more properly viewed as an attempt to invoke the Equal Protection Clause to fine tune Ohio's examination exemption requirement. This case is not, therefore, deserving of this Court's attention.

## B. RULE I, SECTION 9(A)(e) HAS A RATIONAL RELATIONSHIP TO THE GOAL OF ASSURING ATTORNEY COMPETENCE.

In *Schware v. Board of Bar Examiners,* 353 U.S. 232 (1957), the Court held that bar admission criteria "must have a rational connection with the applicant's fitness or capacity to practice law," *id.* at 239. As recognized by the lower courts, three such bases support Rule I, Section 9(A)(e).

As noted above, the Ohio rule credits, for the purpose of meeting the criterion of five years of legal work as a necessary experiential base, only legal work performed outside of Ohio, and does not "count" legal work performed in Ohio by a single employer attorney not admitted to the Ohio bar. This classification rests in part upon the differing breadth of legal experience acquired by each "class" of attorney. The class consisting of all attorneys practicing outside of Ohio includes attorneys with experience in all areas of the law and all types of legal work. By contrast, Petitioner's class of single employer attorneys practicing in Ohio is likely to have lesser breadth of experience. Such an attorney is most usually employed by a business entity and practices in areas relevant to the conduct of a commercial enterprise. He or she is not likely to encounter legal problems arising in such areas as criminal law, domestic relations, wills and estates, personal income and estate taxation, etc. These latter areas of practice most often reside with attorneys pursuing a multiple client private practice. Accordingly, it is fully rational not to give credit to the relatively narrower experience gained by Ohio "corporate attorneys," and to require such attorneys to demonstrate competence in all areas of law through examination prior to being licensed to practice in such areas.

Secondly, as noted above, the purpose of Rule I, Section 9 is to encourage immigration of experienced, capable attorneys into Ohio by relying upon their experience as indicative of competence rather than requiring successful completion of the bar examination. The waiving of the examination for such attorneys removes a requirement which is expensive and inconvenient for a non-resident attorney to fulfill. By contrast, an attorney such as Petitioner who resides and practices in Ohio need not first pass the bar examination to earn his livelihood, and is not confronted with the inconvenience of traveling to Ohio to prepare for and take the bar examination. Accordingly, it is rational to require an Ohio resident attorney to demonstrate fitness by passing the bar examination rather than to rely upon such attorney's legal experience as indicative of competence. Put simply, it is not irrational to require an Ohio attorney to take the Ohio bar examination as a prequisite to being licensed to undertake a broad practice in Ohio. Such a requirement is directly related to attorney competency.

The third rationale is discussed by the Sixth Circuit as follows, Petition for Writ of Certiorari at A6:

> [T]he Ohio rule encourages attorneys who come into the state with less than five years of legal practice to take the bar immediately. Although the state will permit an attorney to practice law for a corporate employer without admission to the bar, concerns of knowledge and competency in Ohio law argue for a policy encouraging these corporate employees to take the bar exam soon after arrival in the state. A policy which would allow such attorneys to gain

> admission without examination after five years of practice would encourage them to practice without taking the bar, and this could have an adverse effect on the level of competence in corporate practice. A state's interest in regulating the practice of law within its borders is compelling, because lawyers are essential to the primary governmental function of administering justice.

Petitioner takes issue with each of these bases. But surely they are not so lacking in merit as to be irrational. The lower courts properly concluded that Rule I, Section 9 is rationally related to assuring attorney competence.

### C. RULE I, SECTION 9(A)(e) DOES NOT OFFEND THE EQUAL PROTECTION CLAUSE.

The above discussion demonstrates that the distinction between all non-Ohio attorneys and Ohio corporate attorneys for bar examination purposes does not offend the Equal Protection Clause. A large measure of deference is due state bar rules due to a state's "compelling interest in the practice of professions within their boundaries," *Goldfarb v. Virginia State Bar,* 421 U.S. 773, 792 (1975). Petitioner has not overcome the rule's presumption of validity, *Parham v. Hughes,* 441 U.S. 347 (1979); *Vance v. Bradley,* 440 U.S. 568 (1979); *Barry v. Barchi,* 443 U.S. 55 (1979), by demonstrating that the rule bears no rational relation to attorney competence, *Schware v. Board of Bar Examiners, supra.* Moreover, the rule may be struck down only if no conceivable, debatable rationale exists upon which the Supreme Court of Ohio *could* have

relied when promulgating the rule, *Minnesota v. Clover Leaf Creamery Co.*, 449 U.S. 456 (1981); *Western and Southern Life Insurance Co. v. State Board of Equalization*, 451 U.S. 648 (1981); *New Orleans v. Dukes*, 427 U.S. 297 (1976); *McGowan v. Maryland*, 366 U.S. 420 (1961); *Morey v. Doud*, 345 U.S. 457 (1957). And even if the classification is not perfect, and has an inequitable application to an individual litigant, the rule must be sustained if rationally applicable to the distinguished classes as a whole, *Schweicker v. Wilson*, 450 U.S. 221 (1981); *Martin v. Walton*, 368 U.S. 25 (1961).

Applying these equal protection doctrines to Rule I, Section 9(A)(e), it is apparent that the rule passes muster. The three bases identified above are fully adequate to support the rule. Accordingly, there is no purpose served in this Court's review of this case.

## CONCLUSION

This petition presents no reason warranting review by this Court. Petitioner has identified no conflict among state supreme courts or federal appellate courts on this issue. No important or novel issue of federal law is presented. Even within the narrow field of state regulation of the practice of law, this case does not present an issue of any great significance. Rather, this case is a straightforward adjudication employing a clearly-established equal protection analysis, and was correctly decided below. The petition should be denied.

Respectfully submitted,

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